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November 3, 1999

**VIA MESSENGER**

Magalie Roman Salas, Esq.  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

RE: Ex Parte Presentation of Omnipoint Communications, Inc. in the Application of Bell Atlantic for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York, CC Docket No. 99-295.

Dear Ms. Salas:

On behalf of Omnipoint Communications, Inc. ("Omnipoint"), and pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, and the Commission's October 8, 1999 Public Notice DA-99-2149, in the above-referenced Docket, enclosed is an original and one (1) copy of a non-proprietary version of the *ex parte* presentation made this afternoon in the above-referenced proceeding to representatives of the Common Carrier Bureau by the following Omnipoint representatives: Carl J. Hansen, Director, Legal & Regulatory Affairs; Ralph Davis, Senior Technical Director; and Susan Cruise, Counsel, Legal & Regulatory Affairs. Omnipoint's presentation urged the Commission not to approve Bell Atlantic's ("BA") current application for authority to offer interLATA, in-region service in New York because BA has not provided Omnipoint with nondiscriminatory access to unbundled network elements, particularly to dedicated local transport facilities (DS-1s and DS-3s).

Omnipoint discussed the prolonged, constant, and costly difficulties it has experienced from November 1996 to date in attempting to have Bell Atlantic ("BA") provision DS-1 and DS-3 interoffice facilities, or dedicated local transport, in New York. Omnipoint discussed that BA is unable to meet its own commitment dates ("FOC" dates) 55% of the time in the Greater New York City area. Monitoring BA's performance in meeting FOC dates and in completing the installation of DS-1 and DS-3 facilities once a FOC date is missed is a manpower and resource drain upon Omnipoint. Further, BA's inability to meet its FOC dates has meant substantial lost revenue to Omnipoint in New York alone.

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Magalie Roman Salas, Esq.

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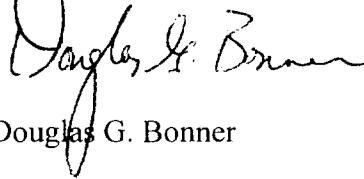
Second, Omnipoint also discussed the problem of BA DS-1 outages and BA's discriminatory and anti-competitive policy of dispatching technicians to correct those outages of its DS-1 circuits. Omnipoint discussed how the average BA DS-1 outage in Greater New York City is 21 hours, and can work a great hardship on its network and on Omnipoint's ability to deliver service to customers. Furthermore, BA's discriminatory and inconsistently applied policy of requiring Omnipoint to have a technician on-site of the outage, before BA schedules its own technician for dispatch, is unnecessary, unreasonable, and wastes valuable Omnipoint technical resources that can be deployed elsewhere. Omnipoint proposed that BA should at a minimum commit to a 2 hour window *if* an Omnipoint technician is genuinely needed on-site by BA to repair a DS-1 outage. Omnipoint also argued that since BA will rely on many of the same interoffice facilities to offer interLATA service that are fundamentally inadequate to provision DS-1 and DS-3 services in a timely manner to Omnipoint, that premature interLATA entry by BA in New York will only make a bad situation worse for BA's competitors.

Finally, Omnipoint proposed various performance measure incentives to ensure that continued inferior DS-1 and DS-3 provisioning and maintenance to the wireless industry does not continue.

Please date stamp the enclosed extra copy of this filing and give it to the messenger for return to my office.

If you have any questions concerning this filing, please contact me at (202) 857-6293.

Sincerely yours,



Douglas G. Bonner

Counsel for Omnipoint Communications, Inc.

Enclosures

cc: Janice M. Myles [Common Carrier Bureau, FCC 445 12th Street, S.W., Room 5-C327, Washington, D.C. 20554] (w/encl.)(via messenger)  
International Transcription Services [1231 20th Street, N.W., Washington, D.C. 20036] (w/encl.) (via messenger)  
Ms. Dee May, Director, Federal Regulatory Group, Bell Atlantic (w/encl.) (via facsimile (202) 336-7922 and U.S. Mail)  
Susan Cruise, Esq. (w/encl.)

Omnipoint Communications, Inc. has Invested \$[\*\*\*Proprietary] Million in a Broadband PCS Network Consisting of [\*\*\*Proprietary] cell sites, primarily within Bell Atlantic's Region.

- Omnipoint has [\*\*\*Proprietary] cell sites in New York, Greater New York City, including Long Island ([\*\*\*Proprietary] sites) and Upstate New York (Syracuse and Albany) ([\*\*\*Proprietary] sites)
- Total # of [\*\*\*Proprietary] and [\*\*\*Proprietary] circuits provisioned by BA for Omnipoint in New York State. [More than twice the similar provisioning for entire CLEC industry in NY: "325 dedicated local transport facilities" through July 1999.]
- Omnipoint provides BA with \$[\*\*\*Proprietary]/month (actual BA Sept. 1999 billings) or \$[\*\*\*Proprietary]/year of recurring revenue for dedicated local transport in NY state.

**Nondiscriminatory Access to Bell Atlantic Local Transport (47 U.S.C. § 271(c)(2)(B)(i)(ii) and (v)) is Essential for Broadband PCS to Develop and Become Fully Competitive With Incumbent Cellular Operators (i.e. Bell Atlantic Mobility) and with Wireline Services.**

- PCS providers are not yet fully competitive with incumbent LEC wireline services and do not yet have significant market share of the wireless market dominated by incumbent cellular operators. Omnipoint had approximately 376,000 customers compared to BA's 6,200,000 mobile customers as of the 4th Quarter of 1998.
- Omnipoint is entirely dependent upon Bell Atlantic to provision and maintain bottleneck DS-1 and DS-3 special access circuits (dedicated local transport).

**The Claim That BA "consistently delivers unbundled network elements on time, when competing carriers ask for them" (Application at 15 ), Ignores Inferior DS-1 and DS-3 Provisioning and Service Provided by BA to Omnipoint in New York from 1996 to date.**

- % of FOC Dates Missed for DS-1s in Greater New York Area: 55%  
([\_\_\_] of [\*\*\*Proprietary])  
Average # of Days that FOC Date is Delayed Before Met 15.4 days  
Total # of Days Late for all Missed FOC Date DS-1s 5127 days  
(or 19.72 years, assuming a 5 business day week)  
Average Cost per Day for Lost Base Transceiver Station (BTS) \$[\*\*\*Proprietary]  
(includes an average of \$[\*\*\*Proprietary]/day lost revenue per  
BTS, or \$[\*\*\*Proprietary] million per year)  
Cost to Omnipoint of BA Missed FOC Dates \$[\*\*\*Proprietary]
- BA does not repair routine DS-1 outages promptly. Average Greater NYC outage is 21 hours. Average DS-1 outage in upstate NY is 12 hours. Omnipoint loses up to 20 PCS channels per cell site for every DS-1 outage at any given time.

- BA anticompetitive Dispatch policy drives up Omnipoint technician overtime costs by requiring technician to wait up to 5-6 hours for a BA technician to be *scheduled* for dispatch to fix a BA DS-1 circuit outage. Omnipoint has invested \$[\*\*\***Proprietary**] to install remote diagnostic testing Customer Service Units ("CSU"s) at [\*\*\***Proprietary**] Omnipoint cell sites to determine if an outage should be repaired by Omnipoint or BA. Omnipoint loses the cost of its technician time and this investment in facilities as a result of BA's dispatch policy.

**There Must Be Performance Incentives in Place to Ensure That Nondiscriminatory Unbundled Access to Local Transport Services Is Provided To BA's Broadband PCS Competitors Before BA Obtains Authority under 47 U.S.C. § 271 to Enter the InterLATA market in New York. Otherwise, Continued Inferior Dedicated Local Transport Provisioning Is Inevitable to the Wireless Industry and BA Backsliding Will Result Once the InterLATA Entry Incentive No Longer Exists.**

- For New Installations of DS-1 Dedicated Transport Circuits:
  - 1) BA should provide 5 day advance written/email notice of BA-missed FOC date, or rescheduling of FOC date, and precise cause(s) for it.
  - 2) BA performance credits for missed FOC dates other than "customer not ready" or "acts of god" as follows: \$100. first day, \$500. second day; \$1,000. third day and each day thereafter.
  - 3) 100% credit for non-recurring installation charges for each missed FOC date.
  - 4) BA must obtain responsible Omnipoint representative's agreement that "Customer Not Ready" ("CNR") justification applies *before* BA unilaterally creates a CNR business record for an installation or repair.
  - 5) Require BA to implement, within three (3) months of the FCC's Order in CC Docket No. 99-295, a detailed OSS tracking system specifically for DS-1 and DS-3 orders for wireless carriers.
- For DS-1 Outages:
  - 1) When an Omnipoint technician's presence is necessary (i.e. access is denied to a building site or an Omnipoint technician's presence is necessary for troubleshooting), require BA to commit to a 2 hour window for its technician to meet an Omnipoint technician on-site. Missed appointments by either party will be reciprocally compensable by the non-appearing party to the appearing party at the BA tariffed or other customary hourly billing rate for its technicians.
  - 2) Require BA to reciprocally compensate Omnipoint for its technician time (at the usual BA technician rate) at the site following a BA demand for Omnipoint technician at the site when there are no access problems or the cause of the DS-1 outage is a BA network problem.
  - 3) Require BA to obtain Omnipoint acceptance of a DS-1 dedicated transport circuit after BA maintains that the circuit's operation is properly restored.